IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1964 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALPESH @ BABU BHAGUBHAI DHODIYA PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1964 of 2003

MR RJ GOSWAMI for Petitioner No. 1

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/05/2003

ORAL JUDGEMENT

The petitioner-detenu, Kalpesh @ Babu Bhagubhai, in this petition under Article 226 of the Constitution of India, has challenged his order of detention dated 23.11.2002 passed by the Commissioner of Police, Surat City, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention of even date supplied to the petitioner, the detaining authority has taken into consideration one Prohibition case, being C.R.No.5739 of

2002 registered against the petitioner by Varachha Police Station on 8.10.2002, which is pending investigation. There is no dispute that the petitioner was released on 9.10.2002 with respect to the said case. Over and above the said solitary case, the detaining authority has also placed reliance on two incidents alleged to have taken place on 28.9.2002 and 3.10.2002 for which the statements of two witnesses are recorded on 6.11.2002 and 7.11.2002, whose identity has not been disclosed by claiming privilege under Section 9(2) of the PASA Act. There is no dispute that the detaining authority has verified the said statements on 21.11.2002. Considering the aforesaid material, the detaining authority has recorded a finding that the detenu being a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act, and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention is required and hence the order of detention has been passed.

Learned Counsel for the petitioner, though raised, various contentions, it is not necessary for me to deal with each and every contention since the petition is capable of being disposed of on the short ground of delay in passing the order of detention. As can be seen from the grounds of detention, a solitary case of Prohibition is registered against the petitioner on 8.10.2002 which is pending investigation and the detaining authority has passed the impugned order of detention after a lapse of about 1 month and five days, i.e. on 23.11,2002. No explanation is forthcoming in explaining the delay in passing the order of detention. True, the detaining authority has relied upon two incidents alleged to have taken place on 28.9.2002 and 3.10.2002 which are, admittedly, taken place, prior to the case registered against the detenu. The fact that the statements of the witnesses with respect to those unregistered cases are recorded, i.e. on 6.111.2002 and 7.11.2002, will go to suggest that the detaining authority has tried to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself.

In an identical situation, this Court, in the decision rendered in the case of Elash Nandubhai Patel v. Commissioner of Police, Ahmedabad City, reported in 1997(1) G.L.H. 381, has held that the detention order is illegal and there is no justification to stay the same.

In the result, the petition is allowed. The

impugned order of detention dated 23.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.